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UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

In re	)	Case Nos. 19-30088 DM (Lead Case)
	)	19-30089 DM
PG&E CORPORATION	)	
-and-	)	Chapter 11
PACIFIC GAS AND ELECTRIC	)	Jointly Administered
COMPANY,	)	

<p>1 Debtors.</p> <p>2 <input type="checkbox"/> Affects PG&amp;E Corporation</p> <p>3 <input type="checkbox"/> Affects Pacific Gas and Electric Company</p> <p>4 <input checked="" type="checkbox"/> Affects both Debtors.</p> <p>5 * All papers shall be filed in the Lead Case</p> <p>6 No. 19-30088 DM</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>) <b>NOTICE OF APPEARANCE AND EX</b></p> <p>) <b>PARTE APPLICATION FOR ORDER</b></p> <p>) <b>AUTHORIZING CITY OF SANTA CLARA,</b></p> <p>) <b>DBA SILICON VALLEY POWER AND</b></p> <p>) <b>NORTHERN CALIFORNIA POWER</b></p> <p>) <b>AGENCY TO INTERVENE AND FILE A</b></p> <p>) <b>RESPONSE TO CALIFORNIA</b></p> <p>) <b>DEPARTMENT OF WATER RESOURCES'</b></p> <p>) <b>MOTION FOR ORDER DETERMINING</b></p> <p>) <b>THAT THE CASTLE ROCK AGREEMENT</b></p> <p>) <b>CANNOT BE ASSUMED AND THAT THE</b></p> <p>) <b>DEPARTMENT OF WATER RESOURCES'</b></p> <p>) <b>CLAIM NO. 78014 BE PAID.</b></p> <p>) <b>[Related To Docket Nos. 11887, 11896, 11999]</b></p> <p>)</p> <p>) Date: N/A</p> <p>) Time: N/A</p> <p>) Courtroom: 17</p> <p>) Place: United States Bankruptcy Court</p> <p>) 450 Golden Gate Ave., 16<sup>th</sup> Floor</p> <p>) San Francisco, CA 94102</p> <p>) Judge: Hon. Dennis Montali</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>
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**TO DEBTORS, THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, AND ALL OTHER PARTIES OF INTEREST:**

City of Santa Clara dba Silicon Valley Power (“SVP”) and Northern California Power Agency (“NCPA”) hereby submit this Ex Parte Application (the “**Application**”), pursuant to Rule 9006-1(c) and 9013 of the Bankruptcy Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”), and this Court’s Second Amended Order Implementing Certain Notice And Case Management Procedure, ¶23, (Dkt. No. 1996), for an order authorizing SVP and NCPA to intervene and file a response to California Department of Water Resources’ (“**DWR**”) “Motion for Order Determining that the Castle Rock Agreement Cannot Be Assumed and that the Department of Water Resources’ Claim No. 78104 Be Paid.” (Dkt. No. 11887) in accordance with the procedure set forth in the Court’s “Memorandum Decision Regarding Dispute Between Debtors And The California Department of Water Resources” filed March 8, 2022, Dkt. No. 11999.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. BACKGROUND

On January 29, 2019, the Debtors commenced voluntary cases for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. On June 20, 2020, this Court entered the Order [Dkt. No. 8053] confirming Debtors' and Shareholder Proponents' Joint Chapter 11 Plan for Reorganization Dated June 19, 2020 [Dkt. No. 8048] (as it may be amended, modified, or supplemented and together with any exhibits or schedules thereto, the "**Plan**"). The Plan became effective on July 1, 2020 [Dkt. No. 8252] (the "**Effective Date**").

On February 1, 2022, the DWR filed its "California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid." [Dkt. No. 11887.]

On February 2, 2022, Reorganized Debtors filed their "Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources." [Dkt. No. 11896.] SVP and NCPA were not a party to either motion. Because SVP and NCPA are parties to the arbitration provision in the Castle Rock Agreement (the "**Cotenancy Agreement**"), Reorganized Debtors did indicate in their motion, Dkt. No. 11896, at footnote 1 that "NCPA and SVP have each authorized PG&E to indicate their support for this Motion and, if the Motion is granted, have indicated that they will participate in the ordered arbitration of the dispute."

On March 8, 2022, this Court issued its "Memorandum Decision Regarding Dispute between Debtors and the California Department of Water Resources," Dkt. No. 11999 (the "**Decision**") granting DWR's motion and denying Debtors' motion. The Court ruled that Debtors have until March 25, 2022 to file a memorandum, not to exceed twenty pages and "limited to the discrete issue described above, in support of their position." And that DWR has until April 8, 2022, to "file a reply memorandum, not to exceed twenty pages and similarly limited." The Court reserved the question of whether to order arbitration of DWR's future liability or a damages trial should Debtors prevail on the question of "whether DWR should or should not be ordered to pay its share of the net loss upon termination of the Agreement."

1 In light of the Court's Decision, SVP and NCPA request permission to intervene and file a  
2 response to DWR's motion not to exceed ten (10) pages by March 25, 2022. Before filing this  
3 Application, counsel for PG&E sought consent of DWR to the relief sought herein (as well as other  
4 issues related to the Motions). DWR refused to consent to the relief requested by SVP and NCPA.  
5 The Reorganized Debtors do not oppose the requested relief by SVP and NCPA by this Application.

6 **II. INTERVENTION AND BRIEFING BY SVP AND NCPA IS WARRANTED.**

7 SVP and NCPA seek permission to intervene and submit a brief limited to ten pages by March  
8 25, 2022 on the question presented by the Court in the Decision: namely, whether DWR should or  
9 should not be ordered to pay its share of the net loss upon termination of the Cotenancy Agreement.  
10 SVP and NCPA seek to intervene and present their own joint brief for the following reasons.

11 First, SVP and NCPA wish to address the merits of the issue presented by the Court in its  
12 Decision. In light of this Court's Decision, this proceeding is no longer merely a question of the proper  
13 forum for this dispute but a question now as to the merits of this dispute. And as such, SVP and NCPA  
14 should be permitted to intervene and protect their interests.<sup>1</sup> The question presented by the Court to be  
15 adjudicated implicates SVP's and NCPA's rights under the Cotenancy Agreement. That said, SVP and  
16 NCPA recognize there are common arguments to be advanced by PG&E, SVP, and NCPA in response  
17 to DWR's motion. In light of this, SVP and NCPA agree to limit their brief to ten pages and will seek  
18 to avoid duplication of argument with PG&E but instead focus on arguments unique to their position.

19 In that regard, only DWR, NCPA, and SVP are parties to the Castle Rock-Lakeville 230 kV  
20 Transmission Line Transmission Service Agreement between Northern California Power Agency and  
21 the City of Santa Clara and Department of Water Resources of the State of California (the  
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23 <sup>1</sup> In SVP's and NCPA's view, there was no need to burden the Court or parties with additional briefing  
24 from them on the question of the arbitrability of this dispute. It was sufficient for PG&E to convey  
25 that SVP and NCPA (non-parties to this proceeding) agreed that the dispute concerning the Cotenancy  
26 Agreement should be arbitrated as provided under the terms of the Cotenancy Agreement. And given  
27 PG&E's preliminary (non-merits) opposition to DWR's motion premised on PG&E's belief that the  
28 arbitration question was a "gating issue," it was premature for SVP and NCPA to intervene in the  
proceeding until the Court determined whether it would exercise jurisdiction over the dispute. It was  
the Court's determination that it will decide some or all of the issues related to the merits of the dispute  
over the Cotenancy Agreement that now necessitates SVP's and NCPA's intervention and  
participation in the dispute in this forum.

1 “Transmission Service Agreement”). We anticipate that our brief will focus on the interrelated  
2 nature of the Transmission Service Agreement and the Cotenancy Agreement, and why a complete  
3 understanding of the Transmission Services Agreement will demonstrate that DWR’s attempt to  
4 terminate its participation in the Cotenancy Agreement was unsuccessful and therefore DWR’s claim  
5 for refund is without merit.

6 Second, as set forth above, the question presented by the Court in its Decision necessarily  
7 implicates the Transmission Service Agreement, which is derivative of the Cotenancy Agreement.  
8 PG&E is not a party to the Transmission Service Agreement and is in no position to defend SVP’s and  
9 NCPA’s rights and interests under that agreement. Moreover, even if DWR stipulates that it does not  
10 seek an adjudication of the parties’ rights and obligations under the Transmission Service Agreement,  
11 the fact that the Transmission Service Agreement is integral to the dispute over the Cotenancy  
12 Agreement creates a risk that the adjudication of issues related to the Transmission Service Agreement  
13 may prejudice SVP and NCPA in a future, separate action against DWR related to that agreement.  
14 Indeed, given that the agreements are so intertwined, SVP and NCPA submit that the Court cannot  
15 adjudicate this dispute without interpreting the Transmission Service Agreement and that very fact  
16 risks prejudicing SVP’s and NCPA’s rights in and to an agreement to which PG&E is not a party and  
17 over which this Court does not presently have jurisdiction. In sum, SVP and NCPA seek this  
18 intervention and permission for limited briefing in order to protect their interests in the Transmission  
19 Service Agreement, which interests are unique and independent of PG&E, and the Cotenancy, where  
20 its interests are aligned with those of PG&E. SVP and NCPA submit that the “burden” of this  
21 additional briefing is nominal to DWR and can be ameliorated by the Court allowing DWR to file a  
22 separate reply brief and/or give DWR more time to file its reply papers.

### 23 **III. NOTICE**

24 Notice of this Application will be provided to (i) the Office of the U.S. Trustee for Region 17  
25 (Attn Andrew R. Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel for DWR and counsel for the  
26 Debtors and Reorganized Debtors; and (iii) all counsel and parties receiving electronic notice through  
27 the Court’s electronic case filing system. SVP and NCPA respectfully submit that no further notice is  
28 required.

1 No previous request for the relief sought herein has been made by SVP and NCPA to this or  
2 any other court.

3 **WHEREFORE**, SVP and NCPA respectfully request entry of an order authorizing them to  
4 intervene and file a response to DWR's motion not to exceed ten pages by March 25, 2022.

5  
6 DATED: March 15, 2022.

RESPECTFULLY SUBMITTED,

7 BOUTIN JONES INC.

8 By: /s/ Thomas G. Mouzes

9 Thomas G. Mouzes

Mark Gorton

10 Robert D. Swanson

11 -and-

12 Lisa S. Gast

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